



Notice Of Motion.

UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

C 113-250.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

THE NORSTRAND CORPORATION and LEIF NORSTRAND,
Defendants-Appellants.

Sirs:

PLEASE TAKE NOTICE that upon the certificate of the Clerk of the United States District Court for the Southern District of New York, dated June 17, 1943, and the affidavit of Gerald V. Clarke, Assistant United States Attorney for the Southern District of New York, verified the 17th day of June, 1943, hereto annexed, and upon all the proceedings heretofore had herein, the undersigned will move this Court at the present term thereof, held in the United States Court House, Borough of Manhattan, City of New York, on the 28th day of June, 1943, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order dismissing the appeal filed herein by the above-named defendants-appellants on April 24, 1943, because in so far as the appeal is taken from

Notice Of Motion.

the sentence, more than five days elapsed from the date of sentence to the filing of a notice of appeal, and in any event the sentence was upon a plea of guilty, and in so far as the appeal is from the denial of a motion to reduce the amount of the fine, the determination of the lower Court was within its discretion and is not appealable.

Dated: New York, N. Y., June 17, 1943.

Yours, etc.,

HOWARD F. CORCORAN,
United States Attorney for the
Southern District of New York,
Attorney for Plaintiff-Appellee,
United States Court House,
Foley Square,
Borough of Manhattan,
City of New York.

To:

RING & MURRAY, Esqs.,
Attorneys for Defendants-Appellants,
Room 2166,
630 Fifth Avenue,
New York, N. Y.

Affidavit Of Gerald V. Clarke.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

C 113-250.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.

THE NORSTRAND CORPORATION and LEIF NORSTRAND,
Defendants-Appellants.

State of New York
County of New York
Southern District of New York }ss.:

Gerald V. Clarke, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York, and is in charge of the above entitled action.

That on the 4th day of December, 1942, the defendants-appellants, The Norstrand Corporation and Leif Norstrand pleaded guilty to an information charging them with buying and selling waste paper at over-the-ceiling prices and failing to keep accurate records thereof, in violation of Public Law 421, 77th Congress, known as the Emergency Price Control Act of 1942.

Said defendants-appellants were subsequently sentenced before the Honorable Alfred C. Coxe, United States District Judge for the Southern District of New York on December 8, 1942, to fines jointly and severally in the amounts

Affidavit Of Gerald V. Clarke.

of \$5,000 on the first count, \$1,600 on the second count and \$500 on all the other counts, making a total of \$7,100.

Heretofore, on the 8th day of March, 1943, the defendants-appellants submitted a petition for reconsideration of judgment and a reduction in sentence. An affidavit in opposition to this motion was filed by plaintiff-appellee on April 19, 1943. This petition was denied by Honorable Alfred C. Coxe, United States District Judge on April 19, 1943.

That subsequently, on April 24, 1943, said defendants-appellants filed notice of appeal from the sentence and the denial of their petition for reconsideration of judgment and reduction in sentence and also filed on May 4, 1943 assignment of errors in connection with the notice of appeal.

No previous application for the relief herein asked has heretofore been made.

WHEREFORE, your deponent prays that this Court dismiss the appeal of the defendants-appellants in the above entitled matter taken on April 24, 1943.

(1) In so far as it is an appeal from the sentence imposed December 8, 1942, for the reason that this judgment was final at that time and did not become final as appellant contends some four months later, and more than five days elapsed from December 8 before the appeal was taken, and also for the reason that the appellant pleaded guilty to the information and therefore cannot appeal from the sentence imposed.

(2) In so far as it is an appeal from the denial of the motion for a reduction of sentence, for the reason that the lower Court's determination not to reduce the amount of the fine was a determination of the matter which was

Clerk's Certificate.

purely discretionary and may not be made the subject of an appeal in the absence of any showing of an abuse of discretion.

GERALD V. CLARKE,
Assistant United States Attorney.

Sworn to before me this
17th day of June, 1943.

LEO COHEN,
Notary Public,

Kings Co. Clk.'s No. 112.
N. Y. Co. Clk.'s No. 234, Bronx Co. Clk.'s No. 23.
Commission expires March 30, 1944.

Clerk's Certificate.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.

THE NORSTRAND CORPORATION and LEIF NORSTRAND,
Defendants-Appellants.

I, George J. H. Follmer, Clerk of the United States District Court for the Southern District of New York, do hereby certify that on December 4, 1942, the above named defendants-appellants pleaded guilty to an informa-

Clerk's Certificate.

tion charging them with buying and selling waste paper at over-the-ceiling prices and failing to keep accurate records thereof, in violation of Public Law 421, 77th Congress, known as the Emergency Price Control Act of 1942.

That thereafter, on December 8, 1942, the above named defendants-appellants were sentenced by the Honorable Alfred C. Coxe, United States District Judge to pay fines jointly and severally in the amounts of \$5,000, on the first count, \$1,600 on the second count and \$500 on all other counts, making a total of \$7,100.

That on March 8, 1943, the above named defendants-appellants submitted a petition for reconsideration of a judgment and reduction in sentence. An affidavit in opposition to this motion was filed by the plaintiff-appellee on April 19, 1943. This petition was denied by the Honorable Alfred C. Coxe, United States District Judge on April 19, 1943.

That subsequently, on April 24, 1943, the defendants-appellants filed a notice of appeal from the sentence imposed on December 8, 1942, and from the denial of the petition for reconsideration of judgment and reduction of sentence; and on May 4, 1943 defendants-appellants filed an assignment of errors in connection with their notice of appeal.

Dated: June 17, 1943.

GEORGE J. H. FOLLMER,
Clerk,
United States District Court,
Southern District of New York.

